

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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October 13, 2009

In Re:

### Legend

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Note =

Intercompany =

Account

State X =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

TY:

Dear       :

This letter responds to your May 29, 2009 request for rulings on certain federal income tax consequences of a partially completed and proposed transaction. The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on the facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Specifically, this office has not reviewed any information and no determination has been made regarding whether the Note or Intercompany Account represents debt or equity for federal income tax purposes.

### **Summary of Facts**

Parent, a State X corporation, is the common parent of an affiliated group of corporations that files a consolidated Federal income tax return (the "Parent Group"). Sub 1 is a corporation wholly owned by Parent. Sub 2 is a corporation wholly owned by Sub 1. Sub 3 is a corporation wholly owned by Sub 2, and Sub 4 is a corporation wholly owned by Sub 3. Sub 1, Sub 2, Sub 3, and Sub 4 became members of Parent Group on Date 1 as a result of the acquisition of all the stock of Sub 1, which was the common parent of another consolidated group. On Date 2, Sub 4 issued and distributed the Note to Sub 3. Between Date 2 and Date 5, interest accrued on the Note, but some amounts were unpaid. Between Date 3 and Date 4, Sub 1 made multiple loans to Sub 4 (Intercompany Account). On Date 5, Sub 4 merged under state law into Sub 3 (the "Dissolution"). On the day before Date 5, Sub 3 contributed the Note to Sub 4. As a result of the Dissolution, the Note (including the obligation for accrued but unpaid interest) was extinguished, and Sub 3 became the obligor on the Intercompany Account that Sub 4 owed to Sub 1.

All the transactions pre-dated the effective date of T.D. 9442.

### **Representations**

Parent has made the following representations:

- 1) The Note (including any accrued and unpaid interest) constitutes indebtedness of Sub 4 to Sub 3 under general principles of Federal income tax.
- 2) The Note was not publicly offered and, was not issued for property, and is not described in section 1273(b)(3).

- 3) The Intercompany Account constitutes indebtedness of Sub 4 to Sub 1 under general principles of Federal income tax law.
- 4) Sub 4 was insolvent for federal income tax purposes at the time of the Dissolution.

### **Rulings**

Based solely on the information submitted and on the representations set forth above, we rule:

- (1) The contribution of the Note by Sub 3 to Sub 4 on the day before the Dissolution will be disregarded for all federal income tax purposes.
- (2) Under § 1.1502-13(g)(3)(ii), as in effect with respect to consolidated return years beginning before December 24, 2008, immediately before the Dissolution, Sub 3 will be deemed to contribute cash to Sub 4 in an amount equal to the balance of the amount of the Note less the fair market value of Sub 4's assets.
- (3) Sub 4 will be treated as satisfying the Note (including accrued but unpaid interest) owed to Sub 3 with its assets and the cash deemed contributed by Sub 3 to Sub 4 for an amount equal to the issue price (determined under section 1273) of a new debt issued on the date of the Dissolution with identical terms. Accordingly, except as provided in Ruling (4) below, no income, gain, deduction or loss will be recognized by Sub 3 or Sub 4 from the deemed satisfaction of the Note.
- (4) Immediately before the Dissolution, Sub 4 will recognize gain or loss upon the satisfaction of a portion of the Note by the difference between the fair market value of its assets transferred to Sub 3 and the basis of those assets in Sub 4's hands.
- (5) Immediately before the Dissolution, Sub 1 will be deemed to lend cash to Sub 3 for a new note with terms identical to the Intercompany Account owed by Sub 4 to Sub 1. Sub 3 will be treated as contributing the loan proceeds to Sub 4, which will be treated as satisfying the Intercompany Account owed to Sub 1 for an amount equal to the issue price (determined under section 1273) of a new debt issued on the date of the Dissolution with identical terms. Accordingly, no income, gain, deduction or loss will be recognized by Sub 4 or Sub 1 from the satisfaction of the Intercompany Account.
- (6) Sub 3 will not be treated as a successor of Sub 4 under § 1.1502-13(j)(2).
- (7) Sub 4's tax attributes not otherwise reduced under § 1.1502-36(d)(1) through (6) will be eliminated under § 1.1502-36(d)(7).

**Caveats**

No opinion is expressed about the tax treatment of the Transaction under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Transaction that are not specifically covered by the above rulings.

**Procedural Statements**

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any federal income tax return to which it is relevant. Alternatively, if you file your return electronically, you may satisfy this requirement by attaching to your return a statement that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Lawrence M. Axelrod  
Special Counsel  
Office of Associate Chief Counsel (Corporate)